

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BUDDY STRUCKMAN,	:	Case No. 1:20-cv-737
	:	
Petitioner,	:	Judge Timothy S. Black
	:	
vs.	:	Magistrate Judge Karen L. Litkovitz
	:	
WARDEN, PICKAWAY	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 26)**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Karen L. Litkovitz. 28 U.S.C. § 636(b). Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on February 2, 2023, submitted a Report and Recommendations. (Doc. 26). Petitioner has not filed objections and the time for doing so has expired.¹

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all

¹ On February 9, 2023, an “objection to the report and recommendations” was docketed, to which document Respondent responded. (Docs. 27, 28). However, the “objection” is not titled an objection, the document does not respond to the Magistrate Judge’s Report and Recommendations, and the filing instead appears to be an untimely reply in support of his motion to appoint counsel. (Doc. 22). Moreover, even when considering the filing (either as an objection or an untimely reply), the Court finds that it does not change the Magistrate Judge’s analysis. The Magistrate Judge recommends continuing the stay in this case because Petitioner has not shown that he has exhausted available state-court remedies. Indeed, Petitioner seems to recognize this, asking the Court to “reinstate action with appointment of counsel or consider reinstate[ment] premature and continue conditioned stay with appointment of counsel.” (Doc. 21 at 2).

of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report and Recommendations should be and is hereby adopted in its entirety.

Accordingly:

1. The Report and Recommendations (Doc. 26) is **ADOPTED**.
2. Petitioner's motion to reinstate this habeas corpus action (Doc. 21) is **DENIED without prejudice**. This action remains stayed and terminated on the Court's active docket pending Petitioner's compliance with the conditions of the July 8, 2021 stay order (Doc. 19).
3. Petitioner's motion for appointment of counsel (Doc. 22) is **DENIED as moot**.
4. A certificate of appealability **SHALL NOT** issue because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 475 (2000), "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling.
5. With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(a)(3) that an appeal this Order would not be taken in "good faith," and therefore **DENIES** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

Date: 2/24/2023

s/Timothy S. Black
Timothy S. Black
United States District Judge